

## GOVERNMENT OF PUDUCHERRY

## LABOUR DEPARTMENT

(G O. Rt. No. 160/Lab./AIL/J/2012, dated 12th September 2012)

## NOTIFICATION

Whereas, the Award in I.D.No. 3 of 2010, dated 19-3-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Kanuvaipettai Co-operative Milk Producers Society and Thiru M. Irusappan over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

## BEFORE THE LABOUR COURT AT PUDUCHERRY

*Present :* Thiru T. MOHANDASS, M.A., M.L.,  
II Additional District Judge,  
Presiding Officer, Labour Court,  
Puducherry.

*Monday, the 19th day of March 2012*

## I.D. No. 3/2010

M. Irusappan .. Petitioner

*Versus*

The President,  
Kanuvapettai Co-operative Milk,  
Producers Society,  
Kanuvapet, Puducherry. . . Respondent

This petition coming before me for final hearing on 7-3-2012 in the presence of Thiruvalargal A. Abdul Rachide, P. Viveganandan, Mrs. N. Bazirakanny and Miss. R. Lurdu Ignacia, Advocates for the petitioner, Thiru M. Nakkeeran, Advocate for the respondent and upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:

## AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No.22/AIR/Lab./J/2010, dated 3-2-2010 of the Labour Department, Puducherry, to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru M. Irusappan and the management of M/s. Kanuvaipettai Co-operative Milk Producers Society, Puducherry over non-employment is justified or not?

(2) If justified, what relief, the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his claim statement has stated as follows:-

The petitioner was appointed as milk measurer in the respondent society in the year 1989. Since the management of the society has not given bonus, education-aided fund, uniform to the petitioner, he has given representation on 21-1-2009, but no action was taken by the respondent management. The respondent management developed an enmity term with the petitioner because of his letters, dated 18-1-2009 and 21-1-2009 and motivated by previous Director of the Society and their favourite members to pick up quarrel with the petitioner and got complaint from them on 22-2-2009 and suspended the petitioner from the service on 25-2-2009 without any notice to him. Since no intimation about the suspension of the petitioner, the petitioner went to his service on 26-2-2009, but he was told that it is at the house of Chairperson and the petitioner compelled to go out of his job. Then the petitioner came to know that his suspension was displayed in the notice-board of the respondent company on 26-2-2009. The Secretary of the Milk Society developed an enmity term against the petitioner and he preplanned and suspended the petitioner from the service and appointed his cousin Narayanamoorthy for the job without observing any rules of the society.

Then the charges were framed against the petitioner and conducted the enquiry and during the enquiry proceedings, the Enquiry Officer violated the principles of natural justice and finally submitted his report on one side in favour of the respondent society and based on the said report, he was removed from his service. Hence, this industrial dispute is filed for reinstatement with back wages and other benefits.

3. The respondent in his counter statement has stated as follows:-

It is true that the petitioner was appointed as milk measurer in the respondent society in the year 1989. The petitioner was suspended on 25-2-2009 in accordance with law due to misconducts committed on 22-2-2009 and that in continuation the petitioner was given a charge sheet, dated 18-3-2009 proposing an enquiry. Subsequently on 1-4-2009 an Enquiry Officer was appointed by the society to conduct enquiry on the charges levelled against the petitioner and the Enquiry Officer has also started his enquiry on 12-4-2009 without any delay. During the enquiry, the petitioner has threatened the Enquiry Officer and disturbed him while conducting the enquiry. Based on the report from the Enquiry Officer, the petitioner was terminated from service on 24-5-2009 as per the resolution of the society.

The respondent society is not an individual person to act according to whims and fancies. The respondent is a Co-operative Society with responsibilities towards its members and it solely depend upon its members only even for its survival. Under the circumstances, the satisfaction of the members of the society is paramount and any one who acts disrespectfully towards the members and who has lost the confidence of the members and consequently the management is not entitled to continue in service, especially when the charges levelled against him were proved in accordance with law. Hence, the petitioner is not entitled to any relief on the reference.

4. On the side of the petitioner, the petitioner was examined as PW.1 and marked Ex. P1 to Ex.P 25. On the side of the respondent, RW.1 was examined and Ex. R1 was marked.

5. *Now the point for determination is:*

Whether the petitioner is entitled for the relief sought for?

*On this point:*

6. The contention of the petitioner is that since the respondent management has not given bonus, education-aided fund, uniform to him, he has given representation on 21-1-2009 and the respondent management developed an enmity with the said letter and got complaints from some of the members and based on which, he has been suspended from service. The learned counsel for the petitioner relied upon the following decisions to support his claim:-

*2010 STPL (LE) 43701 SC:*

Compassionate appointment-Departmental proceedings-Dismissal-Reinstatement-Back wages Ever since his appointment on 9th March 1984 as an Accountant in the Appellant Society, the Respondent No.1 has shown lack of interest in his duties under the Appellant Society-He stopped attending his duties as and when he felt like without permission and without submitting any leave application-This habit did not show any signs of improvement on his reappointment in service on 27th July 1995 or the subsequent order by which he was allowed to rejoin his duties in the Appellant Society on 6th December 2007-While not interfering with the order of reinstatement passed by the Division Bench of the High Court, which was duly acted upon, inclined to modify that part of the said order directing payment of back wages.

*2009 STPL (LE) 42540 SC:*

Reinstatement-Back wages-Direction by the High Court modifying the award to the extent that the respondent workman shall be entitled to re-employment from the date another workman had been taken into employment with 50% back wages from the date of demand notice -Order reinstating the workman not interfered with-Back wages reduced from 50% to 30% which are to be paid within three months.

*2010 STPL (LE) 43571 SC:*

Back wages-Reinstatement with full back wages-Computation of back wages-Serious dispute between the parties with regard to gainful employment of respondent during the period he was out of service-Appellant Co-operative Society also stated to be not financially sound to meet the claim of full back wages-Back wages restricted to 50% from the date of termination to the date of reinstatement.

In order to prove his claim, he has been examined as PW.1. PW.1 in his evidence has deposed he was not informed about the said suspension through notice and he applied to the management under Right to Information Act about action taken by them in regard to his letter on 26-2-2009 and on knowing the same, the Secretary by name V. R. Durai with an intention to employ his own cousin Narayanamoorthy in the job, planned to lay false charges against him with the help of his men and suspended the petitioner and appointed

his cousin Narayanamoorthy in his place. PW.1 has marked Ex.P1 to Ex.P25. Ex.P1 is the copy of the letter sent by the petitioner to the respondent stating that eventhough he was appointed as milk measurer, he was also asked to clean the society premises and he had discharged the additional work of cleaning the office premises and requesting that he may be relieved from the work of cleaning the office premises and to make alternative arrangement for cleaning the office premises. Ex.P2 is the representation on 21-1-2009 requesting for payment of bonus, education allowance, uniform etc., which was not paid to him in time.

7. *Per contra*, the contention of the respondent is that for the misconduct committed by the petitioner on 22-2-2009, he was suspended on 25-2-2009 and conducted the enquiry against him and fair opportunity was given to him during the course of enquiry proceedings and based on the enquiry report, he was dismissed from service. The learned counsel for the respondent submitted the petitioner has indulged in grave misconduct such as insubordination, dereliction of duty and when the employee failed to maintain the confidence and faith with the management, he cannot be allowed to continue in his service. On the side of the respondent, the then Administrator of respondent department was examined as RW.1 RW.1 has marked the enquiry records and the complaints received from the members of the respondent society against the petitioner as Ex.R1. A perusal of Ex.R1 reveals that the members of the respondent society by name Shanmugasundaram, Ezhilvalavan, Samikannu and Chandiradharan have complaint against the petitioner that they went to the respondent society to purchase the milk on 22-2-2009 and the petitioner, who was the milk measurer, has refused to give the milk to them and when they asked about the same, he stated that his work is only to measure the milk and that he can do that work only. In the enquiry proceedings under Ex.P19, the allocation of work given to the petitioner is mentioned in Tamil as follows:-

1. சங்கத்தில் தரமான பால் கொள்முதல் செய்தல்.
2. சங்க அலுவலகத்தை சுத்தம் செய்தல்.
3. பால் கொள்முதல் செய்யும் உபகரணங்களையும் நன்கு சுத்தம் செய்து வைத்தல்.
4. ஒன்றியத்திலிருந்து வரும் ஒப்புதல் ரசீதை கொள்முதல் பதிவேட்டில் ஒட்டிவைத்தல்.
5. பால் கேன்களுக்கு சீல் வைத்து, பால் வண்டியில் ஏற்றி அனுப்புதல்.
6. சங்கத்தில் உள்ள பால் கேன்களை இவர் பொறுப்பில் பராமரித்தல்.

7. பால் குறைவு அல்லது சவர் ஏற்பட்டால் ஒன்றியத்துக்கு சென்றுவருதல்.

8. சங்கத் தலைவரால் இடப்படும் இதர சங்கப் பணிகளைச் செய்தல்.

The above work allocation has given to the petitioner as per the resolution passed on 30-9-1991. The said allocation of work has not been denied by the petitioner anywhere in the enquiry proceedings or before this court. Hence, it is the duty of the petitioner to do the work as allocated by the respondent society. From the evidence of the witnesses before the Enquiry Officer, it reveals that the petitioner has ill-treated the members of the society and insulted the members during the course of his employment. In the above circumstances, the attitude of the petitioner in not discharging his duty, as allocated by the management is purely dereliction of duty and insubordination, which amounts to violation of conduct rules.

8. The contention of the petitioner is that the respondent society developed an enmity with the petitioner because of his letters, dated 18-1-2009 and 21-1-2009 and motivated by previous Director of the Society and their favourite members to pick up quarrel with the petitioner and got complaint from them on 22-2-2009. But this contention cannot be believed, since the petitioner himself in his letter under Ex.P1 requested the respondent society that he may be relieved from the work of cleaning the office premises and to make alternative arrangement for cleaning the office premises and permit him to do the work of measurement of milk only. In the above circumstances, there is every chance to believe the version of the respondent that the petitioner had not discharged his duties properly and he was adopted confronting attitude towards the management and treated the members badly and refused to work for them by which he violated the service rules of the society.

9. A perusal of Ex.R1 further reveals that on 8-11-2000 the petitioner was issued with a suspension order for his misbehaviour with the Directors and members of the respondent society, for which the petitioner submitted apology letter on 25-11-2000 to the respondent society by giving assurance that he will not indulge any such misconduct in future. This would clearly prove that the petitioner was regular in misbehaving with the members of the society, for which the respondent society has rightly taken disciplinary action against him. The respondent is the co-operative society and the petitioner is its employee and it is the duty of the petitioner to obey the order of his master and refusal of order would

amount to misconduct, for which the respondent can take action against him. Hence, the respondent has established that the petitioner had not discharged his duties properly and he was adopted confronting attitude towards management and treated the members badly and refused to work for them.

10. The petitioner has stated that the fair opportunity was not given to him in the enquiry proceedings and the Enquiry Officer has violated the natural justice and acted in favour of the respondent society.

11. On the other hand, the respondent has stated that right from the beginning, the petitioner was given fair and sufficient opportunity throughout the disciplinary proceedings and the principles of natural justice and law were adhered to in the entire enquiry proceedings.

12. On the side of the petitioner, the copy of the enquiry proceedings was marked as Ex.P19. A perusal of Ex.P19 reveals that the charges were framed against the petitioner and based on which, the enquiry was conducted and the petitioner participated in the enquiry proceedings and four witnesses were examined on the side of the respondent society and they were cross-examined by the petitioner and on the side of the petitioner, one document was marked as exhibit and based on the oral and documentary evidence, the Enquiry Officer came to the conclusion that the charges against the petitioner were proved and then show cause notice was sent to him along with the copy of the enquiry proceedings and since there was no explanation from the petitioner, he was terminated from service on 24-5-2009. Hence, the petitioner was given fair opportunity during the course of enquiry proceedings and in the above circumstances, the contention of the learned counsel for the petitioner that the Enquiry Officer has violated the principles of natural justice cannot be accepted.

13. Now the court has to see whether the punishment imposed by the respondent management is shocking disproportionate one or not. In this regard, the learned counsel for the respondent has submitted that the misconduct committed by the petitioner is grave in nature as he attempted to create unrest and disharmony among the employees.

14. It is pertinent to refer the following decision, which is relevant to this case:-

*2008(4) L.L.N. 545:*

"Industrial Disputes Act, 1947, S.11A - Certified Standing Order, S.24(a-n) - Dismissal from service- Respondent 2, workman dismissed from service for misconduct-Labour Court held the punishment as

disproportionate to the charge proved and passed award for reinstatement, with discontinuity of service, but without back wages, considering that loss of back wages would be just punishment to the workman-Writ petition by the management was rejected by the learned Single Judge - Hence, this writ appeal-Held no material on record to show that due to misconduct by workman, there was unrest in the establishment - Finding given by Labour Court is sensible - Labour Court had justified and had given reasons, which satisfied the requirements laid down by Supreme Court in this regard in *Kanaiyalal Agarwal Versus Factory Manager, Gwalior Sugar Company Limited*, [2002(1) L.L.N.58] - findings of Labour Court as upheld by the learned Single Judge, do conform to the statutory prescriptions in this regard- No reason to interfere with said findings."

*1998(2) L.L.N. Page 84:*

"Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 sub-sections 3(16) and 26 and Sch. IV, item (1) Clause (g) - Scope of - Clause (g) is not reasonably capable of two constructions misconduct covers only those types of unfair labour practice where minor and technical misconducts - It have resulted in dismissal or discharge of delinquent workman and does not cover major misconduct -Punishment of dismissal or discharge would be shockingly disproportionate if inflicted for minor misconduct and after considering past record."

In the above case, the Hon'ble Supreme Court has held that for the minor misconduct, the punishment of dismissal would be disproportionate. In the case on hand, as already stated, the petitioner, being the employee of the respondent society has not discharged his duty properly due to overload, which he had intimated to the respondent under Ex.P1. In the above circumstances, I feel that the misconduct committed by the petitioner is not such grave in nature that does not warrants the punishment of dismissal awarded by the respondent company which is disproportionate one and hence the petitioner can be reinstated without back wages. Further, since the petitioner has violated the allocation of work of cleaning, which is given to him, it is ordered to cut one increment with cumulative effect which will reform himself as loyal and sincere worker to serve the respondent society in a better manner, which will also enable the others to do better service to the organisation. Accordingly, this point is answered.

15. In the result, this industrial dispute is partly allowed and the petitioner is entitled for reinstatement with continuity of service and other benefits. However, he is not entitled for back wages. Further, it is ordered to cut one increment of the petitioner with cumulative effect. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 19th day of March 2012.

**T. MOHANDASS,**  
II Additional District Judge,  
Presiding Officer,  
Labour Court, Puducherry.

*List of witnesses examined for the petitioner :*

P.W.1 — 20-10-2011-Irusappan

*List of witnesses examined for the respondent :*

RW.1— 9-2-2012 Kamaraj

*List of exhibits marked for the petitioner :*

Ex. P1 — Letter by petitioner to respondent, dated 18-1-2009.

Ex. P2 — Letter by petitioner to Registrar, dated 21-1-2009.

Ex. P3 — Letter by respondent to petitioner, dated 21-2-2009.

Ex. P4 — Notice by respondent, dated 25-2-2009

Ex. P5 — Letter by respondent, dated 18-3-2009

Ex. P6 — Letter by petitioner to respondent, dated 19-3-2009.

Ex. P7 — Letter by respondent to petitioner, dated 23-3-2009.

Ex. P8 — Letter by petitioner to respondent, dated 25-3-2009.

Ex. P9 — Lawyer's notice, dated 3-4-2009 to the respondent.

Ex. P10 — Letter by respondent to petitioner, dated 3-4-2009.

Ex. P11 — Letter by petitioner to respondent, dated 4-4-2009.

Ex. P12 — Letter by Enquiry Officer to petitioner, dated 5-4-2009.

Ex. P13 — Lawyer's notice, dated 11-4-2009 to the respondent.

Ex. P14 — Letter by Enquiry Officer to the petitioners, dated 13-4-2009.

Ex. P15 — Letter by petitioner to Registrar, dated 27-4-2009.

Ex. P16 — Letter, dated 30-4-2009 by petitioner to Registrar.

Ex. P17 — Letter by petitioner to Enquiry Officer, dated 16-4-2009.

Ex. P18 — Notice by Enquiry Officer, dated 23-4-2009.

Ex. P19 — Show cause notice by respondent to petitioner, dated 15-5-2009.

Ex. P20 — Letter by petitioner to Enquiry Officer, dated 19-5-2009.

Ex. P21 — Letter by petitioner to Enquiry Officer, dated 19-5-2009.

Ex. P22 — Lawyer's notice by petitioner to respondent, dated 4-6-2009.

Ex. P23 — Respondent's Lawyer's notice, dated 16-6-2009.

Ex. P24 — Letter by petitioner to Conciliation Officer, dated 26-6-2009.

Ex. P25 — Letter sent by one Selvi to Registrar, dated 30-1-2012.

*List of exhibits marked for the respondent:*

Ex. R1 — Copy of show cause notice with enquiry proceedings and the complaints received from the members of the society.

**T. MOHANDASS,**  
II Additional District Judge,  
Presiding Officer,  
Labour Court, Puducherry.

**GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT**

(GO. Ms. No. 11/AIL/Lab./G/2012, dated 17th September 2012)

**NOTIFICATION**

In exercise of the powers conferred by section 5(1) of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (Act No. 27 of 1996) and in supersession of the notification issued in G.O. Ms. No. 20/2000/Lab./G, dated 10-10-2000 published in Gazette No. 46, dated 14-11-2000 of the Labour Department, Government of Puducherry hereby reconstitutes an expert committee consisting of persons specially qualified in building and other construction work for advising the Government for making amendment of rules as per sections 40 and 62 of the Act.